IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 26.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.627 of 1997

Hindus belonging to Chengalvarayan Street
and neighbouring street of Venkatrayanpettai,
Parittipuram Village and Tiruvattipuram
Municipal Limit, rep. by Sri Rama Gounder .. Petitioner

Vs.

1.The District Collector,
T.V.Malai, T.S.District.

2.The District Revenue Officer,
T.V.Malai, T.S.District.

3.The Chief Secretary,
Government of Tamil Nadu,
St. George Fort,
Madras-9.

4.M.A.Azeem

5.Hamedullah Ha

6.John Basha

7.Goush Khan

8.Amanullah

9.Syed Hussain .. Respondents

Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records from respondents 1 and 2 proceedings No.nil dated 19.11.1996 on the file of the first respondent and the proceedings No.Na.Ka.A1/31854/93 dated 19.10.93 on the file of the second respondent, quash the same and direct the respondents 1 and 3 to conduct fresh enquiry and pass orders in accordance with law.

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For Petitioner : Mr.R.Margabandhu
For Respondents 1 to 3 : Mr.P.Subramanian, G.A.,

For respondents 4 to 9 : No appearance

ORDER

(Order of the Court was delivered by P.SATHASIVAM, J.)

Hindus belonging to Chengalvarayan Street and neighbouring Street of Venkatrayanpettai, Parithipuram Village and Tiruvattipuram Municipal Limit, through Sri Rama Gounder filed the above writ petition for quashing the proceedings of respondents 1 and 2 dated 19.11.1996 and 19.10.1993 respectively and direct respondents 1 to 3 to conduct fresh enquiry and pass orders in accordance with law.

2. It is seen from the materials placed and the representation of the Muthavally, Masjidhi, Rahamadhya Abbey Sunnath Jamath, Alli Street, Cheyyar, that in their Grievance Day petition dated 07.12.1992, the then Sub-Collector, Cheyyar had sent proposals in his proceedings dated 31.03.1993 for transfer of land in S.No.27/68 of Parithipuram Village from village site poramboke to Muslim burial ground poramboke. Survey No.27/68 measuring 0.41.0 hectare of Parithipuram Village is classified as village natham in the revised revenue accounts. One small mosque, one pillar and two tombs with Arabic and Urdu inscriptions for the year 1937 and 1944 are available. The District Revenue Officer has inspected the site on 24.08.1993 and issued orders on 19.10.1993 transferring an extent of 0.39.5 hectare as burial ground for Muslims leaving an extent of 0.01.5 hectare which was assigned in favour of the encroacher as house site patta. The present writ petition is filed against the said order of the District Revenue Officer. It is the main grievance of the petitioner that survey No.27/68 measuring 0.41.0 hectare is situated in the midst of the habitation. However, the District Collector, Tiruvannamalai Sambuvarayar District, in his counter affidavit, has stated that there is no habitation on the East and South of the place under dispute. In the old accounts viz., village 'A' register, the place is classified as "Village Natham-Kabarasthan". The Collector has also stated that the inhabitants are not using the said land for public purpose, but it lies vacant covered by thorny bushes. The transfer was effected by the District Revenue Officer, Tiruvannamalai, on the recommendation of the Sub Collector, Cheyyar, and on the personal inspection of the site. At the time of initiating transfer proposals, 'A1' notice inviting objections from the public was published in the locality by the Village Administrative Officer of Parithipuram Village by affixing a copy of the notice in the land and by beating tom-tom in the locality. Some of the persons living in the locality have also singed in the notice. During the field inspection, the then Sub Collector and the District Revenue Officier found a big Minar and a Darga in the said land. There were graveyards with stones of Arabic

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and Urdu inscriptions of the years 1937 and 1944. Since the population of the Muslims increased and there is no sufficient space for burial ground for Muslim people, the transfer of land was ordered by the District Revenue Officer on the request of the Muslims.

3. It is further seen that after the said land was transferred as Muslim burial ground, the Hindus under the leadership of the Sri Rama Gounder raised objections for burying dead bodies of Muslims. They had also applied for cancellation of the proceedings of the District Revenue Officer. To avoid communal clash, peace committees were constituted and peace talks were held with both the sections of the people.

4. Mr.Margabandhu, learned counsel appearing for the petitioner, by taking us through the impugned order of the District Revenue Officer, has submitted that the petitioners were not afforded an opportunity and no notice was issued before allotting the Government poramboke land bearing survey No.27/68 in favour of the Muslims as burial ground.

5. Against the said contention, the learned Government Pleader has brought to our notice that before effecting transfer, 'A1' notice was issued and the same was duly published in the locality. He also brought to our notice that the same was intimated through the local people by way of beating tom-tom. The proceedings of the Collector dated 24.11.1997 and the impugned proceedings of the District Revenue Officer show that no objection was received from any one. The proposal was also intimated to the Municipal Commissioner. In such circumstances, the contention that the petitioners were not afforded an opportunity and no notice was issued to them are liable to be rejected.

6. Considering the objection of the petitioner that the land in survey No.27/68 lies in the midst of habitation, the same was considered by the Revenue authorities and the site bearing survey No.121/3A was allotted in favour of the Muslim people for being used as burial ground. Though the learned counsel for the petitioner vehemently contended that after allotment of the land in survey Nol.121/3A, the Muslim people have no right to use the land in S.No.27/68, we are unable to accept the said contention. We have already referred to the inspection by the officers and they had noted that there were graveyards with stones of Arabic and Urdu inscriptions of the years 1937 and 1944. In such circumstances, after finding that the land in survey No.27/68 should not be used as burial ground, permitted for Muslims to use the same for conducting prayers during Muslim festivals such as Ramzan, Bakrid, Milladinabi etc by the Muslim community. In view of the factual finding by the Revenue officers and the relevant aspect viz., survey No.27/68 lies adjacent to the habitation, the authorities have permitted the Muslims to use the same only for prayers, that too during festival time.

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7. During the course of hearing, in view of the claim made by the petitioner, this Court has directed the District Revenue Officer, Tiruvannamalai District, to submit a report with regard to the position of the land as on date in survey No.27/68 of Parithipuram Village and also directed him to furnish all the details from 1997 to August 2006.

8. Pursuant to the said direction, the District Revenue Officer, Tiruvannamalai District, has forwarded a letter to the Additional Government Pleader, High Court, Chennai, dated 19.09.2006. In view of the controversy in the land in question, it is useful to refer para 2 of the report, which reads as under:

> 2. Originally the S.No.27/68 measuring 0.41.0 hectare of Partithipuram village has been classified as "village Natham" as per the Revenue accounts. The then District Revenue Officer, Tiruvannamalai has inspected the site on 24.08.1993 and issued orders in his proceedings Rc.B1/31854/93 dated 19.10.1993 transferring an extent of 0.39.5 hect. (New subdivision No.27/69) as burial ground for muslim leaving an extent of 0.01.5 hect., (New sub division No.27/68) which was assigned in favour of the encroacher as house site patta. During September 1996 when the people of muslim community have attempted to construct a compound wall around the area transferred as burial ground (Gabarsthan) the Hindus residing adjoining site have raised objections stating that general health of the residents will be affected if the site is used as burial ground. To avoid communal clashes, peace committee were constituted and peace talks were conducted by the Collector and the Superintendent of Police with both sides of the people on 19.11.96.
> 3. On three occasions (i.e.) on 16.1.97, 10.03.97 and 3.4.97 law and order problem arised between the two communities when the bodies buried by the Muslims in the transferred site. During the peace talk held on 22.5.1997 in presence of Collector and Superintendent of Police, a decision was taken that an alternative site should be selected for burial ground purpose for Muslims and the transferred site S.No.27/69 should not be used as burial ground but can be used for Namas (Religious prayer) purpose. Subsequently one Thiru Rajendran son of Elumalai Gounder of Cheyyar has come forward to part with the land owned by him in S.No.121/3A with an extent of 0.20.0 hect. situated in Parithipuram village, Cheyyar Taluk for exchange of Government poramboke land. Accordingly, the Collector, Tiruvannamalai in his proceedings RC No.B1-66847/97 dated 24.11.97 has ordered to transfer the patta land in S.No.121/3A (0.20.0 hect) to burial ground for Muslim in exchange of 0.27.0 hect of Government patta poramboke land in S.Nos.291 and 292/1

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of Parithipuram village, Cheyyar Taluk. After that the Muslim community people are using the above land (S.No.121/3A) for burial ground purpose. The transferred site (S.No.27/69) which was ordered earlier is being used for conducting prayers during muslim festivals such as Ramzan, Bakrid, Milladinabi etc., by the muslim community. A compound wall was raised around the boundary of S.No.27/69 during December, 2002. There are one small mosque, one pillar and two tombs are still in existence in the site. No other structures or buildings found in the site now. The site is not used as burial ground, there are no law and order problem in the village. There are one terraced house and one hut in S.No.27/68 (0.01.5 hect) which is classified as village natham."

9. It is clear that though alternate land viz., S.No.121/3A was assigned in favour of the muslim community for being used as burial ground, in view of the fact that one small mosque, one pillar and two tombs are in existence in S.No.27/68, the revenue authorities permitted the muslim community people to use the said place to conduct prayers during their festivals. The said decision cannot be faulted with. The counter affidavit filed in the year 1997 shows that according to the records available in the Taluk Office, muslim population is 3651 and they are having only three places viz., S.Nos.4.2, 5A4, 21/8 and 27/68 as burial ground. In the same counter, the Collector has stated that there is no habitation on the East and South of the place under dispute.

10. Taking note of all these aspects and in view of the factual information by the revenue authorities, we are unable to accept the claim made by the petitioner. Consequently, the writ petition fails and the same is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The District Collector,
Tiruvannamalai District,Tiruvannamalai.

2.The District Revenue Officer,
Tiruvannamalai District,Tiruvannamalai.

3.The Chief Secretary,
Government of Tamil Nadu,
St. George Fort,
Madras-9.

Copy to: The Superintendent of Police,
Tiruvannamalai, Tiruvannamalai District.

+1cc to Govt. Pleader Sr 50267
+1cc to Mr.R.Margabandhu,Advocate Sr 50071

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